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No. 86-756

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1986

GURPARTAP SINGH BIRK, ET AL., PETITIONERS

v.

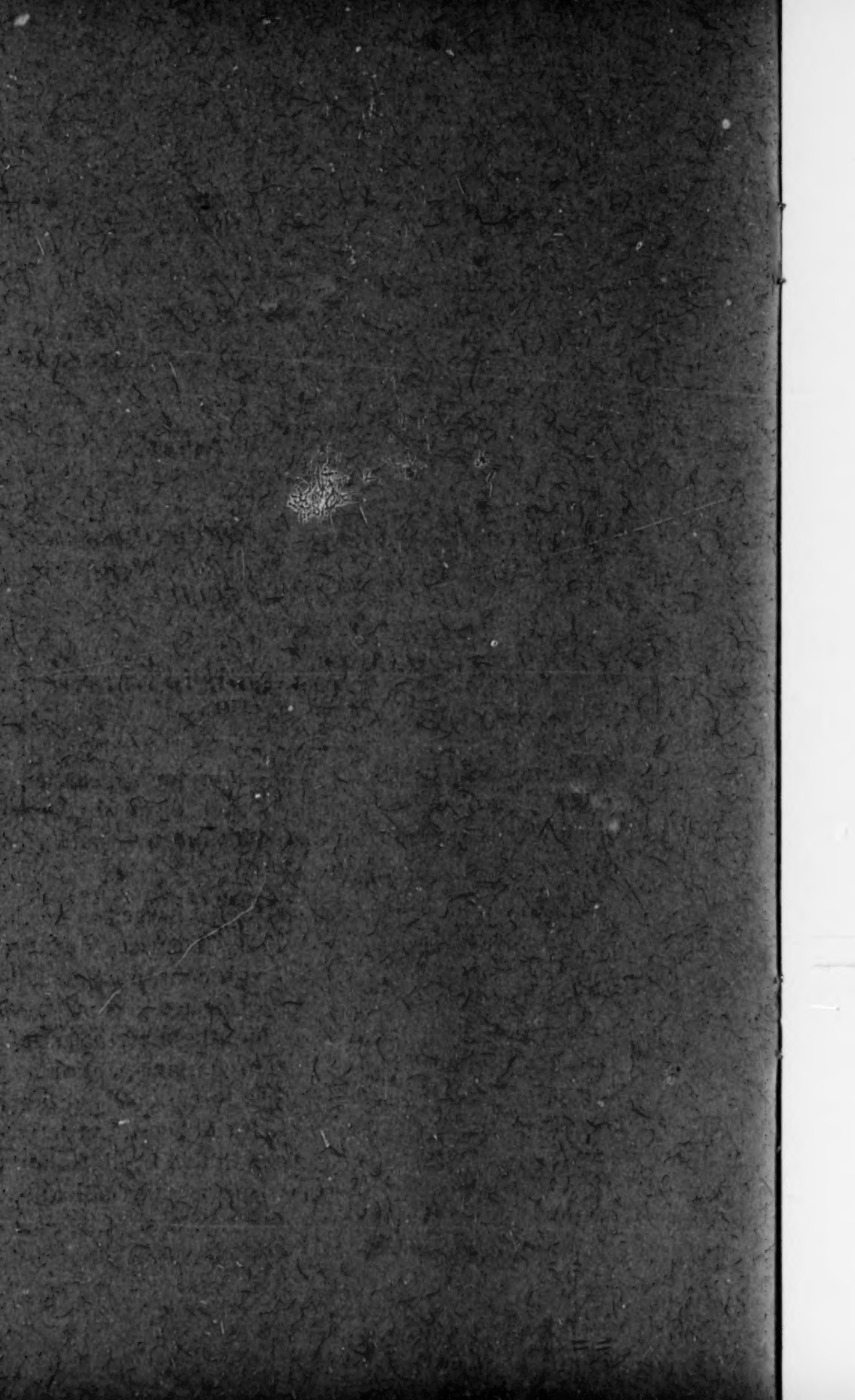
UNITED STATES OF AMERICA

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT**

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

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4 p



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Petitioners contend that the court of appeals erred in reversing an order of the district court dismissing an indictment on the ground that it allegedly failed to state a federal offense.

On May 9, 1985, petitioners were charged in an indictment returned in the United States District Court for the Eastern District of Louisiana with conspiracy to kill one Bhajan Lal, "an internationally protected person," in violation of 18 U.S.C. 1117. Several months later, the grand jury returned a superseding indictment charging petitioners with conspiracy to kill Bhajan Lal, "a foreign official, internationally protected person, and official guest," as defined in 18 U.S.C. 1116(b), in violation of 18 U.S.C. 1116 and 1117. The district court dismissed the superseding indictment on the ground that Bhajan Lal, the Chief Minister of the State of Haryana, India, was not a foreign official, an official

guest, or an internationally protected person, as those terms are defined in 18 U.S.C. 1116 (Pet. App. 39-40). The court of appeals reversed (Pet. App. 30-38). It held that the State Department's activities in protecting Lal bestowed "official guest" status on him within the meaning of 18 U.S.C. 1116 (Pet. App. 33-38).

Petitioner contends that Lal did not qualify as an "official guest" within the meaning of Section 1116, because the Secretary of State, through the Chief of Protocol, did not designate him formally as an "official guest." Whatever the merits of petitioners' contentions, they are not presently ripe for review by this Court.¹ The court of appeals' decision places petitioners in precisely the same position they would have occupied if the district court had denied their motion to dismiss. If petitioners are acquitted following a trial on the merits, their contentions will be moot. If, on the other hand, petitioners are convicted and their convictions are affirmed on appeal, they will then be able to present their contentions to this Court, together with any other claims they may have, in a petition for a writ of certiorari seeking review of a final judgment against them. Accordingly, review of the court of appeals' decision would be premature at this time.²

¹It is now more than 15 months since the return of the superseding indictment, more than 18 months since the return of the original indictment, and more than 14 months since the district court's dismissal order. Further interlocutory review at this time would cause additional delay in the final resolution of the charges against petitioners.

²Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

NOVEMBER 1986